

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB RORS 14-04 Ratification of Rules of the Department of Environmental Protection

**SPONSOR(S):** Rulemaking Oversight & Repeal Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	11 Y, 0 N	Rubottom	Rubottom

### SUMMARY ANALYSIS

The petroleum contamination site rehabilitation program<sup>1</sup>, or Petroleum Restoration Program (PRP), originated in 1986 to clean up environmental sites contaminated by petroleum product storage leaks. The program was revised in 1996 and again in 1999. It is funded by an excise tax on petroleum products that generates about \$200 million per year in revenue for the associated trust fund. The program is operated by the Florida Department of Environmental Protection (FDEP).

For over 20 years, FDEP has had rulemaking authority respecting competitive procurement for rehabilitation services required in the PRP. The FDEP has never used that authority prior to the past year.

In 2013, SB 1502, the bill implementing the General Appropriations Act, was enacted requiring all contracts for site rehabilitation be competitively procured if entered into on or after July 1, 2013. Prior to that date, the Florida Department of Environmental Protection (FDEP) initiated rulemaking to regulate competitive procurement of site rehabilitation services. The rules were filed for adoption in December, 2013.

Two of the rules promulgated under that 2013 legislation are estimated to have an impact in excess of \$1 million over 5 years. A rule meeting that threshold cannot become effective unless ratified by the Legislature.<sup>2</sup>

PCB RORS 14-04 authorizes the following agency rules to go into effect:

- Rule 62-772.300, F.A.C., establishes the minimum qualifications for contractors performing petroleum contamination rehabilitation activities under the PRP.
- Rule 62-772.400, F.A.C., establishes the procedures FDEP will use for the competitive procurement of contractors.

The proposed bill authorizes the rules to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

<sup>1</sup> See s. 376.30711(1)(a), F.S.

<sup>2</sup> Section 120.541(3), F.S.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **1. Present Situation**

The Petroleum Restoration Program ("PRP") was created in 1986 by enactment of the State Underground Petroleum Environmental Response Act. It was designed to restore sites polluted by petroleum storage in Florida. After many decades of petroleum storage in Florida, hundreds of sites had been so contaminated that the cost of restoration required by more recently enacted environmental laws, particularly the Water Quality Assurance Act of 1983<sup>3</sup> and the Federal Clean Water Act of 1972,<sup>4</sup> exceeded the owners' and creditors' interests in the property. Economic reality would have led to the private abandonment and State takeover of most of the more polluted sites, with the State of Florida succeeding to legal burden to restore the sites. The PRP provides public funding for the cleanup of these mostly private sites.

The program is funded by a dedicated excise tax on all petroleum products produced in or imported into Florida, contributing approximately \$200 million annually<sup>5</sup> to the Inland Protection Trust Fund.<sup>6</sup> For fiscal year 2013-14, the Legislature appropriated \$125 million for the PRP.

In 1986, the fiscal analysis accompanying that year's legislation predicted that there were 2000 contaminated sites in Florida. Since that time, over 25,000 contaminated sites have been identified of which over 17,000 are eligible for funding under the PRP.<sup>7</sup> As of the end of the 2012-13 Fiscal Year, approximately 7,100 sites had been rehabilitated, approximately 3,300 sites were undergoing some phase of rehabilitation, and approximately 6,700 sites were still awaiting rehabilitation.

Prior to 1996, site owners had the option of performing their own cleanup and sending the bill to the state for reimbursement, or waiting for the FDEP to rehabilitate their site in priority order. The program was revised in 1996 to remove the option of site owner reimbursement. That legislation left the funding of sites on a priority basis, authorized use of contractors selected by site owners but preapproved by FDEP, added cost-share programs allowing an owner to clean up a site out of priority order when contributing a share of private funds, and the legislation required the application of risk-based principles to corrective actions. In 1999, the Legislature enacted further revisions, providing funding for certain activities including free product recovery activities at sites in advance of priority order. Until July 1, 2013, most rehabilitation funds have been paid to contractors selected by site owners. The FDEP approved the activities of those contractors based on initial site evaluations and rehabilitation plans reviewed and approved by FDEP staff prior to the initiation of rehabilitation activities.

A site's priority for rehabilitation services is scored on relative risk factors including: fire/explosion hazard, threat to uncontaminated drinking water (based on proximity of the site to applicable water sources), migration potential, and other related environmental and geological factors.<sup>8</sup> Site specific data about the level of contamination is not considered in initial scoring of sites<sup>9</sup>.

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<sup>3</sup> Sections 376.30-376.317, F.S.,

<sup>4</sup> PL 92-500, 86 Stat. 816.

<sup>5</sup> FDEP: "Petroleum Restoration Program Improvements-Presentation to the Legislative Budget Commission", p.1 (Sept. 4, 2013)(Attached. Also available in LBC meeting materials for 9/12/13.)(Attachment downloaded from: <http://www.leg.state.fl.us/Data/Committees/Joint/JLBC/Meetings/Packets/Petroleum%20Restoration%20Program%20Improvements.pdf>.)

<sup>6</sup> Section 376.3071, F.S.

<sup>7</sup> FDEP: "January 2012 Program Briefing", p.1 (latest program briefing found at FDEP website, viewed at: [http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/geninfo/2012Program\\_Briefing\\_11Jan12.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2012Program_Briefing_11Jan12.pdf)).

<sup>8</sup> Rule 62-771.300(1), F.A.C. The priority scoring is based primarily upon site location with little consideration of the actual contamination of the site. (From a meeting between House staff and FDEP staff, June 28, 2013, in which background questions about site scoring and priorities were addressed informally.)

<sup>9</sup> Rule 62-771.300(5), F.A.C.

For over 20 years, FDEP has had authority to establish procurement processes for the PRP by rule.<sup>10</sup> Prior to 2013, it does not appear that FDEP had used that rulemaking authority.

In 2013, the Legislature amended s. 376.30711, F.S., to require: (1) all contracts for providers under the PRP to be procured through competitive bidding; (2) a statement under oath from all owners, responsible parties, and cleanup contractors and subcontractors, that no compensation, remuneration, or gift, of any kind, directly or indirectly, has been solicited, offered accepted, paid or received in exchange for designation or employment in connection with the cleanup of an eligible site, except for the compensation paid by the department to the contractor for the cleanup; (3) a statement under oath from all cleanup contractors and subcontractors receiving compensation for cleanup of eligible sites that they have never paid, offered or provided any compensation in exchange for being designated or hired to do cleanup work, except for the compensation for the cleanup work; and (4) any owner, responsible party or cleanup contractor or subcontractor who falsely executes either of those statements to be prohibited from participating in the PRP.<sup>11</sup>

Effective and efficient implementation of the 2013 changes in law necessitated rulemaking, including a new procurement rule. The Department has also undertaken some competitive procurement activities under general procurement laws<sup>12</sup> and applicable existing rules.

### Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>13</sup> Rulemaking authority is delegated by the Legislature<sup>14</sup> through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”<sup>15</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>16</sup> To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>17</sup> The grant of rulemaking authority itself need not be detailed.<sup>18</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>19</sup>

An agency begins the formal rulemaking process by filing a notice of the proposed rule.<sup>20</sup> The notice is published by the Department of State in the Florida Administrative Register<sup>21</sup> and must provide certain information, including the text of the proposed rule, a summary of the agency’s statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule’s adverse effect on specified aspects of the state’s economy or increase in regulatory costs.<sup>22</sup>

The economic analysis mandated for each SERC must analyze a rule’s potential impact over the 5 year period from when the rule goes into effect. First is the rule’s likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.<sup>23</sup> Next is the likely adverse

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<sup>10</sup> Section 287.0595, F.S.

<sup>11</sup> Section 376.30711(2)(d)-(e), F.S. These paragraphs each expire on June 30, 2014.

<sup>12</sup> Chapter 287, F.S.

<sup>13</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>14</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>15</sup> Section 120.52(17), F.S.

<sup>16</sup> Section 120.54(1)(a), F.S.

<sup>17</sup> Sections 120.52(8) & 120.536(1), F.S.

<sup>18</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>19</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>20</sup> Section 120.54(3)(a)1, F.S.

<sup>21</sup> Section 120.55(1)(b)2, F.S.

<sup>22</sup> Section 120.541(2)(a), F.S.

<sup>23</sup> Section 120.541(2)(a)1., F.S.

impact on business competitiveness,<sup>24</sup> productivity, or innovation.<sup>25</sup> Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.<sup>26</sup> If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature.<sup>27</sup>

Present law distinguishes between a rule being “adopted” and becoming enforceable or “effective.”<sup>28</sup> A rule must be filed for adoption before it may go into effect<sup>29</sup> and cannot be filed for adoption until completion of the rulemaking process.<sup>30</sup> As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

### Adoption of Rules

In June 2013, FDEP initiated rulemaking on site priorities and procurement to implement the 2013 reforms. Effective January 16, 2014, the Department amended its rules governing priority ranking, Rules 62-771.100 and 62-771.300, F.A.C., which authorizes rescoring of priorities to better reflect the current law. These rules were estimated to not have an impact significant enough to require the preparation of a SERC.

On December 27, 2014, FDEP filed for adoption competitive procurement rules for the PRP. Two of those rules require legislative ratification based on SERCs<sup>31</sup> estimating an impact in excess of \$1 million over 5 years.

### Impact of Rules

Rule 62-772.300, F.A.C., establishes the minimum qualifications for contractors performing petroleum contamination rehabilitation activities under the PRP. The rule is estimated to have a recurring cost in excess of \$15 million, based on the estimated cost to contractors of maintaining the minimum qualifications established by the rule. This estimate may be high as the law<sup>32</sup> already mandates some of the qualifications in the rule.

Rule 62-772.400, F.A.C., establishes the procedures FDEP will use for the competitive procurement of contractors. The rule is estimated to have a recurring cost of approximately \$41.2 million, including the cost of responding to competitive solicitations and the transactions fees associated with the use of MyFloridaMarketPlace under the procurement rules. Again, it is difficult to determine which of these costs result from the statutory requirement for competitive procurement and which derive from the implementing rules.

## **2. Effect of Proposed Changes**

The bill ratifies Rules 62-771.300 and 62-771.400, F.A.C., allowing each rule to become effective.

### **B. SECTION DIRECTORY:**

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<sup>24</sup> This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>25</sup> Section 120.541(2)(a) 2., F.S.

<sup>26</sup> Section 120.541(2)(a) 3., F.S.

<sup>27</sup> Section 120.541(3), F.S.

<sup>28</sup> Section 120.54(3)(e)6, F.S. Before a rule becomes enforceable, thus “effective,” the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

<sup>29</sup> Section 120.54(3)(e)6, F.S.

<sup>30</sup> Section 120.54(3)(e), F.S.

<sup>31</sup> Copies of the SERCs prepared on the two rules ratified by the bill are in possession of the staff of the Regulatory Oversight & Repeal Subcommittee and are expected to be provided in published meeting materials when the PCB is noticed for consideration.

<sup>32</sup> Section 376.30711(2)(b)-(c), F.S.

Section 1. Ratifies the following rules solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S.:

- Rule 62-772.300, F.A.C.
- Rule 62-772.400, F.A.C.

The bill expressly limits ratification to the effectiveness of the rules. The bill directs the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2: Provides the act goes into effect upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The bill itself creates no additional source of state revenues. Application of the rule will generate fees to MyFloridaMarketPlace.
2. Expenditures: The bill itself requires no state expenditures. Costs of implementing the rules ratified are evaluated in the SERC for each rule.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill has no impact on local government revenues.
2. Expenditures: The bill does not impose additional expenditures on local governments.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill itself does not directly impact the private sector. Any resulting economic impacts are due to the substantive policy of the rule as addressed in the SERC for that rule.

### **D. FISCAL COMMENTS:**

The economic impacts projected in the statements of estimated regulatory costs would result from the application and enforcement of the specific TMDL in the specified water body.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### **2. Other:**

No other constitutional issues are presented by the bill.

### **B. RULE-MAKING AUTHORITY:**

The bill meets the final statutory requirement for DEP to exercise its rulemaking authority implementing competitive procurement under the PRP. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

# **Petroleum Restoration Program Improvements**

## **Presentation to the Legislative Budget Commission Pursuant to Specific Appropriation 1668 of the 2013-14 General Appropriations Act**

**Florida Department of Environmental Protection  
September 4, 2013**

### **Executive Summary**

The Department of Environmental Protection (Department) Petroleum Restoration Program (Program) has been in existence since 1986 and is designed to rehabilitate sites contaminated with the release of petroleum products, under certain eligibility requirements. The Program is funded by the Inland Protection Trust Fund (IPTF), and for the fiscal year 2013-14, the Legislature appropriated \$125M for the rehabilitation of eligible petroleum contaminated sites. However, under the provisions of Senate Bill 1500, Specific Appropriation 1668 of the FY 2013-14 General Appropriations Act ("Proviso") and Section 29 of Senate Bill 1502 ("Implementing Bill"), that appropriation has been limited to provide the Department up to \$50M to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. In addition, the Department is further restricted, after June 30, 2013, to only entering into contracts that have been competitively procured through specific provisions of the state procurement laws under Chapter 287, Florida Statutes. The balance of the appropriation is subject to approval by the Legislative Budget Commission. This document is submitted in consideration of such approval.

During the past two years, at the direction of Secretary Herschel T. Vinyard Jr., the Department has undertaken a deliberate review of its divisions, districts, and programs in an effort to determine the effectiveness and efficiency of each program and make improvements. As part of this review, the Department has determined that the Petroleum Restoration Program must provide more fiscal accountability for its expenditures, lower the cost of site rehabilitation, and prioritize those sites that pose the greatest risk to human health and the environment.

As a result of these efforts, and with the support of the Legislature, the Department is developing a new Program procurement rule for contracted site rehabilitation services. The Department is also revising one other rule that will improve the effectiveness and efficiency of the Program without reducing Florida's existing, stringent environmental standards. In addition, the Department is preparing a new solicitation package in order to competitively procure a number of qualified contractors that will be tasked to conduct site rehabilitation at state- funded sites. As these Program improvement milestones are achieved, the Department respectfully requests that the balance of the FY 2013-14 Fixed Capital Outlay appropriation be released from the Executive Office of the Governor (EOG) reserve.

### **Background**

The Florida Legislature enacted the Underground Petroleum Environmental Response Act in 1986 to address the problems of contamination from leaking underground petroleum storage tanks, resulting in the establishment of the Program. In order for a site owner to have a contaminated site rehabilitated under the Program, it must be eligible for funding by the IPTF, which is itself funded from an excise tax on petroleum and petroleum products imported to the state. Approximately \$200 million is deposited annually into the IPTF, most of which is available for site rehabilitation. At the end of the 2012-13 FY, and out of approximately 17,300 funding-eligible sites or gasoline filling stations, approximately 7,100 sites have been rehabilitated, approximately 3,300 sites are undergoing some phase of site rehabilitation, and approximately 6,700 sites await rehabilitation. A site can have

more than one discharge. Funding for rehabilitation is based on a relative risk scoring system. Every eligible site has been assigned an initial numerical score between 5 and 115, with 5 representing a very low potential threat to human health and the environment and a score of 115 representing a substantial potential threat. Site rehabilitation is funded based on available budget and its priority score.

In 1996, and as result of an Attorney General report documenting abuse, inefficiencies and fraud, the Legislature made comprehensive revisions to the Program, which:

- Required contaminated site rehabilitation to be conducted in priority order using "preapproved contractors" selected by owners of eligible sites. Tasks associated with the rehabilitation of these sites are approved by the Department and reimbursed at fixed rates;
- Created cost-share programs where the site owner can clean up a site out of priority score by using private funds; and
- Directed the Department to incorporate risk-based corrective action principles to its contamination restoration programs.

In 1999, the Legislature addressed certain problems identified since the 1996 revisions. The Legislature directed the Department:

- To provide funding for certain source removal activities, such as abandoned or leaking tanks;
- To provide funding for free-product recovery in advance of priority score; and
- To encumber no more than \$5 million per year to conduct free product recovery in advance of priority score order.

Since the last major revision in 1999, there have been no major internal revisions or significant legislative changes. In 2012, and as part of a Department-wide review of all its divisions, districts, and programs, questions surfaced about the financial operation and effectiveness of this Program. This led Secretary Herschel T. Vinyard Jr. to request that his Inspector General and senior management at the Department review the Program and identify areas for improvement. The evaluation is ongoing, but as a result of certain preliminary findings, the Department has taken some initial steps to improve the Program, including:

- Changes to the processing of work orders and change orders to provide more accountability over costs paid by Department and to better align funding priorities to existing statutes and legislative direction.
- Bringing in outside experts to review the Program and its processes.

The Department is currently taking additional steps, as directed in the Proviso and Implementing Bill, to transition the Program from the existing "preapproved contractor" approach to a competitive procurement system based on state procurement law in Chapter 287, Florida Statutes and new rules being developed by the Department. Additional details regarding funding and assigning rehabilitation work, a strategic five-year funding plan for the Program, and the objectives of the rulemaking process are further described in the following sections and appendices.

### ***1. Program Objectives and Funding Priorities during Transition Period***

Consistent with legislative intent, s. 376.3071(5) F.S., the Program must focus rehabilitation activities on sites where the potential risk to human health and the environment is the greatest; therefore, the Program's main objective during the transition period will be to fund rehabilitation work at sites where the risk is the greatest.

In addition, the Program will continue to fund work where the owner shares the cost of rehabilitation and the Low Score Site Initiative (LSSI) program. As shown in the table below, the remaining balance of the FY 2013-14 Fixed Capital Outlay initial appropriation of up to \$50 million is approximately \$16.7 million, and the Department will prioritize funding the remaining balance consistent with the objectives outlined above.

**TOTAL OBLIGATED AS OF AUGUST 9, 2013 AND FUNDING PRIORITIES**

<b>FY 13-14 Petroleum Tanks Cleanup Initial Appropriation</b>	<b>\$50,000,000</b>
Total obligated to-date in work orders and task assignments.	-\$15,886,028
Total obligated to-date in change orders for Operation and Maintenance (O&M) of remedial systems, supplemental site assessments, additional excavations, well abandonments, cost-shared cleanups, and utility payments to cover the cost of running remedial systems.	-\$17,400,000
<b>Balance of \$50M Appropriation</b>	<b>\$16,713,972</b>
<b>Projected Funding Obligation and Priorities</b>	
Low Score Site Initiative (fund work at approximately 236 sites)	-\$6,000,000
Imminent Threat Sites.	-\$500,000
Site rehabilitation for 27 high-risk sites whose work orders did not meet the June 29, 2013 deadline.	-\$5,500,000
Site rehabilitation activities for 12 high-risk sites with only a Site Assessment performed in 2012-13.	-\$2,500,000
Fund site rehabilitation where owner is sharing the cost of remediation.	-\$1,000,000
Fund free product recovery initiative facilities where free product threatens sensitive receptors.	-\$500,000
<b>Total projected obligations</b>	<b>-\$16,000,000</b>
<b>Balance after projected obligations</b>	<b>\$713,972</b>

As shown in the above table, \$15.8 million was spent on work orders for various activities ranging from site assessments to monitored natural attenuation. However, to meet the June 29, 2013 deadline and not have to shut down cleanup progress-making activities, work orders for ongoing critical such as remedial system O&M (including utilities to keep systems running), supplemental site assessments, supplemental excavations, well abandonments leading to site closure, etc., were processed via change orders totaling approximately \$17.4 million. Note, this approach was a one-time event designed to maximize staff time efficiencies due to a very short deadline and it will not be repeated. As stated above, the remaining balance of approximately \$16.7 million will be obligated to cover costs for site rehabilitation activities based on risk, site assessments in the Low Score Site initiative program, cost-share programs, and free product recovery initiative where free product threatens sensitive receptors. For details on cost-shared remediation, please refer to Section 1.3 below. Understandably, the above amounts represent estimates of costs and, in cases where actual costs are less than estimated costs, the Department will fund remediation activities for sites scored 70 to 75. Procurement of assessment and remedial services for the balance of the existing appropriation and additional releases from the EOG reserve will be made on an open and competitive basis such as Invitation to Bid (ITB) or Request for Proposals (RFP).

**1.1 Petroleum Restoration Program Strategic Funding Plan**

In order to continue to improve the effectiveness and efficiency of the Program for the current year and well into the future, the Department has developed a 5-year strategic funding plan. The Plan is based on the Petroleum Restoration Program's mission: **to protect the health of all people under actual circumstances of exposure by incorporating to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner (s. 376.3071(5)(b), F.S.** The plan focuses on specific actions designed to support the Program's mission and incorporates clear and measurable goals. The plan is provided in Appendix A.

## 1.2 Low Scored Site Initiative

Acknowledging that sites scored below 29 may represent a minimal residual threat to human health and the environment, this initiative was incorporated into the Petroleum Restoration Program as a means to reduce the significant number of eligible but low risk sites, and return them to productive economic use. See §376.3071(11)(b), F. S. The statute also allows sites that are eligible for state restoration funding to receive payment for costs up to \$30,000 for a site assessment and provides up to \$10 million in annual funding for the initiative. The LSSI main objectives are:

- to assess and, where warranted, close sites with very low actual threat to human health and the environment; and
- to ensure that properties with minimal contamination are put back to productive use.

Owner participation in the LSSI is strictly voluntary and as result of numerous inquiries from owners wishing to return their sites to productive re-use in the shortest amount of time possible and to meet site closure goals shown in the Strategic Funding Plan, the Program intends to fund the LSSI as one of their funding priorities during the transition period. There are approximately 2,500 sites scored below 29 that are eligible for funding and could participate in the Low Scored Site Initiative (LSSI) program. The Department estimates that at least 1,000 of these pose minimal risk to human health and the environment and should be returned to full economic use if these sites can be closed. As of July 1, 2013, there are 236 owners that have applied for funding and approximately another 300 applications are expected by the end of the fiscal year.

Prior to the restart of the LSSI program this year, the Department made a number of improvements including procurement procedures to comply with the Proviso and Implementing Bill. The Department expects to restart the FY 2013-2014 LSSI program on August 30, 2013. <sup>1</sup>

## 1.3 Cost-Share Funding Agreements

The Department routinely enters into three types of agreements with owners willing that are sharing the cost of site cleanup. Site cleanup can proceed under the following agreements:

- Pre-approved Advanced Cleanup (PAC). Where an owner has to contribute a minimum of 25% of the cost of cleanup;
- Petroleum Participation Cleanup Program (PCPP) where the owner pays up to 25% of the cost of cleanup; and
- Site Rehabilitation Funding Agreement (SRFA) where cost share percentage between the owner and the Department varies.

SRFAs are implemented under 376.30714, F.S., and are not affected by the procurement changes required in the Proviso or Implementation Bill. However, funding for PAC and PCPP sites in 2013-14 will be procured through competitive bidding pursuant to ss. 287.057. Therefore, any work orders issued after July 1 for PACs or PCPP sites will need to be competitively procured under one of the provisions of Ch. 287, F.S.

## 2. Petroleum Restoration Program Procurement

In order to implement Specific Appropriation 1668, Section 29 of the Implementing Bill added provisions to s. 376.30711, requiring that *"all task assignments, work orders, and contracts for providers under the Petroleum Restoration program entered by the department on or after July 1, 2013"* must be procured through competitive bidding pursuant to s. 287.056, s. 287.057, or s. 287.0595. Currently, the procurement of contractual services by

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<sup>1</sup> Section 287.057 provides the procedures that state agencies must use for the receipt of competitive sealed bids, proposals, and replies to procure commodities or contractual services in excess of \$35,000. However, when the purchase price meets or exceeds \$2,500 but does not exceed \$35,000, Department of Management Services' rules implementing Section 287.057 prescribes an alternative, informal procedure. See Rule 60A-1.002(3) F.A.C. Further, the rules provide that if less than two quotes are received, the agency must document why additional quotes were not received. If the agency determines that conditions warrant negotiation on the best terms and conditions, the agency may proceed with the procurement. Since the payment under LSSI is statutorily capped at \$30,000 for each site, the purchase of assessment services will be under the \$35,000 threshold that would require the use of an invitation to bid, request for proposal or invitation to negotiate. See §§ 287.057 and 376.3071, Fla. Stat. Therefore, in all circumstances, the purchase of contractual services under LSSI would be subject to Rule 60A-1.002(3), F.A.C., and the informal process of obtaining quotes for the services.

the Department is limited to the process authorized in s. 287.057. Therefore, the Department has begun working on a solicitation package under the provisions of s. 287.057 to procure a pool of qualified contractors to conduct petroleum contaminated site rehabilitation services.

## **2.1 Solicitation and Contracting Approach**

The Department's immediate objective is to develop a pool of competitively procured, qualified contractors ("agency term contractors") through an Invitation to Negotiate (ITN) process consistent with s. 287.057, F.S. In order to accomplish this objective, and consistent with previous procurements for similar services, the Department is preparing a solicitation package detailing the methodologies to be used to select these contractors, including personnel qualifications, previous work experience, technical capability, and cost.

In addition, the Department is developing performance expectations for contractors, and ongoing evaluations will be conducted to ensure the taxpayers are getting the best value for their dollar. Finally, in order to provide a more level playing field between large statewide contractors and their smaller, regional counterparts, the Department intends to divide the state into three geographic regions. If a contractor is interested in performing petroleum restoration in more than one of the geographic regions, they will be required to submit a competitive procurement package for each region. The Department anticipates that the procurement notice will be published in the Florida Administrative Register on September 9, 2013, with negotiations with selected contractors to be finalized November 30, 2013. A proposed procurement schedule is provided in Appendix B.

Once the pool of qualified contractors is procured, for the duration of the term contract, the selection of contractors to provide assessment and remediation services will closely follow the flowchart provided in Appendix C. The flowchart shows the internal process for the approval of work once a contractor has been assigned a site. In contrast with the preapproval program, an agreed upon scope of work, level of effort, and firm cost estimates are the main instruments used to generate a task assignment under which all work will be conducted under the new system.

In addition, the Department's agency term contracts will establish that no minimum amount of work is guaranteed and contractor performance will be evaluated on an ongoing basis, which may result in a contractor being removed from the pool. Periodically, and as needed, the Department will issue a new solicitation for term contractors, in order to maintain a pool of qualified contractors with sustained high performance and value to the State.

For phases of remedial work estimated to be less than \$25,000 such as monitoring activities or well abandonments, the Department will assign work to an agency term contractor utilizing objective criteria including proximity, qualifications, workload, and past history of performance. The Department may also choose to request quotes from contractors if direct assignment will not provide the best value to the State. The Department will directly assign all site assessments based on objective criteria.

For phases of remedial work estimated to exceed \$25,000, and in order to obtain the best value for these activities, the Department will issue an informal request for quotes using MyFloridaMarketPlace electronic quote system (e-Quote) in the State's acquisition system (Ariba Sourcing) or by contacting all contractors in the appropriate region via direct e-mail.

If the Department is faced with a situation where unforeseen conditions exist following the issuance of a work assignment to a vendor, a change order may be authorized that would increase the total cost of the work assignment. In this case, the cost related to the additional work will be based on pricing provided in the informal quote process or, if the additional work isn't covered in the original request for quote, the Department will negotiate a price using the vendor's rate schedule contained in its agency term contract.

The Department's agency term contracts will also recognize the Department's ability to separately issue a formal competitive solicitation, outside of the term contracts, at one or more eligible sites utilizing one of the authorized DMS procurement methods. When issued as a separate formal competitive procurement (ITB, RFP, or ITN) all vendors meeting the minimum qualification requirements would be eligible to compete for the project. In fact, the Department is preparing to publish such an ITB in the Department of Management Services Vendor Bid System (VBS) on or around the first week of September.

## **2.2 Equipment Purchases and Divestiture Plan**

As part of its move to improve the cost effectiveness of the Program, the Department intends to end the practice of purchasing remedial systems. As of August 2013, the Department owns 561 fully functional remedial systems dispersed throughout the state with 296 systems (over 50%) shut down and sitting idle for six months or more during a rehabilitation process. In addition, the annual cost of system repair, maintenance, storage, and inventory management is estimated to be in excess of \$250,000 per year. These costs of ownership are significant, and may not provide a positive return on the investment of financial and administrative resources diverted from the Program's primary objective. Based upon an evaluation of existing remedial stock, the Department has concluded that a phased divestiture is the most reasonable course of action. In the interim, the Department will direct contractors to develop an equipment operational lease alternative in their proposals.

As part of its equipment divestiture plan, the Department has established the following goals:

- Determined that a total of 561 fully functional systems are sited throughout the State.
- All 561 systems have been mapped to determine their current location.
- All details (pumps, tanks, etc.) have been summarized for each system.
- Determined that capitalized equipment replacement expenditures over last three fiscal year period amounted to \$800,000.
- Determined that 296 systems are shut down and sitting idle.
- Determined that a phased approach vs. a one-time all stock divestiture is the most reasonable and cost-effective course of action.

A summary of the Department's equipment divestiture plan with pending action items is provided in Appendix D.

## **3. Rule Development**

S. 287.0595 provides specific direction to the Department to adopt rules for petroleum response contracts and provides procedures to:

- determine the qualifications of responsible vendors prior to advertisement and receipt of bids, proposals or replies;
- award such contracts to the lowest responsible and responsive vendor;
- govern payment of contracts; and
- govern negotiations for contracts.

The Department is further directed in the statute to follow the criteria applicable to existing contracting law to the maximum extent possible and to be consistent with the goals and purposes of the Program. Additionally, the Proviso language directs that "[n]o funds may be released after January 1, 2014, unless the department has adopted rules to implement ss. 376.3071, 376.30711 and 376.30713, Florida Statutes." This language provides clear direction to the Department to cease implementing the Program based on the existing Standard Operating Procedures and instead develop rules to describe a procurement process for the Program which is open and competitive and resulting in qualified contractors. To accomplish this objective, the Department published a Notice of Rule Development in the Florida Administrative Register on May 30, 2013, and held a rule workshop on June 19, 2013. While still subject to change through the rulemaking process, the Department's primary objectives for the rules are as follows:

### Proposed Amendments to Chapter 62-771, F.A.C., Petroleum Contamination Site Priority Ranking Rule

- Develop a definition of "Imminent Threat" to clearly and consistently determine those sites which currently, or will likely soon, pose a direct exposure risk to human health or environmental receptors and therefore need to be addressed urgently and out of priority order.
- Establish that the Department will re-score a site after assessment and/or remediation based on site specific data.

- Ensure that trust funds are allocated to address impending or actual threat to human health and the environment and that once the threat has been satisfactorily addressed, re-evaluate the site's priority funding order.

#### Creation of new Chapter 62-772, F.A.C., Procurement Procedures for Petroleum Cleanup

- Establish minimum qualifications for contractors to perform petroleum contaminated site rehabilitation activities, such as the capacity to perform or direct supervise the work, and the maintenance of professional liability insurance.
- Establish procedures for the procurement of petroleum contaminated site rehabilitation services for state funded cleanup, including procedures to procure multiple agency term contractors.
- Establish procedures for the assignment of work to agency term contractors either through (1) direct assignment for site assessments and site rehabilitation phases with a low estimated cost; or (2) through an informal request for quotes process.
- Establish procedures to allow an open dialogue between the Department and the responsible party to provide input into the scope of work, including site logistics and discuss site closure options available under Rule 62-780.680, F.A.C.
- Establish procedures where a responsible party can reject, for good cause, the agency term contractor the Department assigns to their site either through direct assignment or when requesting quotes.
- Establish procedures for the evaluation of contractor performance, including health and safety, on time deliverables, cost savings, and site owner review.
- Establish procedures for contractor selection associated with negotiating cost share agreements with the Department.
- Establishing procedures for emergency situations, including imminent threats to human health, safety, or the environment.
- For cost-share programs such as PAC and SRFAs, establish that site owners may select one or more agency-term contractors if their percentage of shared costs for rehabilitation exceeds 25%.
- Establishing that the Department will follow Ch. 287, F.S., as to the terms and conditions of contracts.
- Ensuring an objective, transparent, efficient and consistent procurement process;
- Achieve the best value for the State in all procurement activities.

The Department has posted rule-relevant information on the Division of Waste Management's website throughout the rule development process.

## **Proposal**

This foregoing plan addresses all aspects of the Proviso and Implementing Bill and will improve the effectiveness and efficiency of the Petroleum Restoration Program. Therefore, the Department respectfully requests approval of this plan by the Legislative Budget Commission. The Department will separately request the release of \$25M from EOG reserve as justified based on actual expenditures, on or after November 1, 2013. In addition, the Department will request the release of the remaining \$50M from EOG reserve after the Department's new rules to implement sections 376.3071, 376.30711 and 376.30713, Florida Statutes, are adopted.

## APPENDIX A

### Petroleum Restoration Program Strategic Funding Plan

This is the first Petroleum Restoration Program strategic plan and it explicitly focuses on the Program's mission: ***to protect the health of all people under actual circumstances of exposure by incorporating to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner (s. 376.3071(5)(b), F.S.)*** The plan identifies specific actions to support the mission. The plan includes three strategic principles of success that should guide it for the next five years and it highlights an approach designed to ensure that Program expenditures provide the greatest value to public health and environmental protection.

#### The Program's Mission

The mission recognizes the importance of protecting sensitive receptors and restoring our State's natural resources to beneficial use by taking into account a fundamental element: meet high standards of protection by incorporating accepted risk-based cleanup approaches to obtain environmental protection and achieve site closure. In general, if it can be demonstrated that contaminants left in soil and groundwater will not cause an adverse impact to people or the environment, they may be able to be left in place and allowed to degrade over time. Using this approach, Program resources can be redirected to the cleanup of other sites that pose a greater risk to human health or the environment. To evaluate risk-based cleanups, the exposure pathways need to be identified and evaluated for each site. Exposure pathways are the avenues or ways in which the contaminants could affect human health or the environment and include ingestion or uptake of water, direct contact with water or soil, and the inhalation of vapors or dust.

#### Principles of Success

To complement its mission and prepare for the implementation of its strategic plan, three principles of success will guide the program's actions. The principles further define the Programs' mission, plot its path forward, and create a definition of success against which efforts can be measured.

- 1. Protection of human health and the environment under actual circumstances of exposure.** This principle is the cornerstone of the Program's mission and ensures that Program resources and efforts are focused on evaluating risk to human health and the environment and in addressing those sites that pose the highest actual risk in priority order.
- 2. Funding designed to address sites on an actual risk basis.** Having a coherent funding strategy that focuses human and budgetary resources on addressing actual risks means that, as directed by statute, the program's efforts must first be directed to remove or reduce the risk's source from *every site* deemed to represent the highest actual risk to human health and the environment. Only when that objective is met, the program should switch its focus to remove or reduce the risk's source from those sites where the actual risk is moderate.
- 3. Collaboration and dialogue with all stakeholders.** The ability to enter into a dialogue to fulfill its mission in a cost-effective manner must involve all parties. The program will expand its role as a convener of multiparty discussions and will reach out to owners, lending institutions, and other stakeholders.

#### Strategic Focus Areas

**Focus Area #1 – Refining the actual potential risk posed by a site to sensitive receptors.** The program will focus on re-evaluating the residual risk posed by sites where the source of that risk has been reduced to a level that no longer threatens human health or the environment under *actual* circumstances of exposure. This focus area's primary objective is to advance a more proactive approach in facilitating site closure by ensuring responsible parties that their sites pose no risk. This has the added advantage that owners may be able to develop or sell their properties.

## Focus Area #2 – Incorporating risk and sound science into determining the endpoint of active cleanup.

The program will focus on determining the endpoint of active cleanup by establishing a range of threshold Natural Attenuation Default Concentration (NADC) levels that are applicable in the context of reduced risk posed by contamination and site use. As required by s. 376.3071(5)(c)3, F.S., the Program will determine the conditions under which alternate NADCs are adequately protective of human health and the environment so that the site may be moved to a less expensive cleanup phase with no loss of protection to people or the environment. In addition, the program will establish a robust chemical analytical sampling program to better define the processes that control natural attenuation. This focus area's primary objectives are to reduce the Program's capital expenditures where active remediation and site management is not necessary to eventually achieve cleanup target levels.

## Petroleum Restoration Program in 2012-13

As shown in the table below, the program achieved closure of 341 sites in FY 2012-13 and over 50% of closures were in the initial or Site Assessment phase. The largest program expense (\$29M) was in the next phase (Remedial Action Construction) which consists of soil excavation and installation of groundwater remedial systems. Under this phase, 198 sites sustained soil excavation, remedial system installs, or bioremediation via injection of biological nutrients. The next phase is the Operation and Maintenance (O&M) and O&M of 449 systems cost \$21M. The O&M phase at a site generally lasts three to four years or, in some cases, much longer if contaminants do not respond to treatment. Upon a remedial system reducing contaminants to concentrations where they will naturally degrade, the systems are turned off and Post Active Remedial Monitoring (PARM) begins and it lasts a minimum of one year to evaluate potential contaminant rebound or moving the site to the next phase. A total of 435 sites were in PARM at a cost of \$8M. Finally, if contaminants in groundwater are at or below concentrations where they will naturally degrade, the site is moved to the Monitored Natural Attenuation (MNA) phase where, knowing that contaminants will naturally degrade, it can stay for years as long as access to minimally contaminated groundwater does not exist. A total of 418 sites were in MNA at a cost of \$5M. The remaining 901 sites are in other programs such as Pre-approved Advance Cleanup (PAC), Site Rehabilitation Funding Agreement (SRFA), Free Product Recovery Initiative (FPRI), etc.

## General Program Facts and Costs for Fiscal Year 2012-2013 (Program Eligible Sites) to-date

Activity	Number of sites per activity for FY 2012-13	Total cost of activity in FY 2012-13	Number of sites closed in FY 2012-13	Number of sites remaining for FY 2013-14
Site Assessments. (This does not include LSSI).	1,205	\$24M.	132 sites	870 remaining in Site Assessment phase. 203 awaiting next phase of work
Remedial Action Construction.	198	\$29M	5 sites	193
Operation and Maintenance (O&M) of remedial systems.	449	\$21M	5 sites	444
Post Active Remedial Monitoring	435	\$8M	14 sites	421
Monitored Natural Attenuation.	418	\$5M	19 sites	399
Total number of Low Score Site Initiative (LSSI) site assessments.	239	\$10M	80 sites	159
Sites in other programs/phases such as PAC, SRFAs, FPRI, etc. Also included are the costs of change orders, utilities, and remedial system costs	797	\$28M	99 sites (includes sites closed that were associated with work orders from previous fiscal years)	698
<b>Σ</b>	<b>3,741 sites</b>	<b>\$125 million</b>	<b>354 sites closed</b>	<b>3,387 sites</b>

From the total program expenditures in FY 2012-13, it is clear that the best return on the program's investment is concentrated in the site assessment phase and LSSI where 212 sites (over 50%) of the Program's site closures were achieved during last year. In addition, another critical advantage of this phase is that it also determines the *actual* risk posed by a site which is one of the principles of the program's success.

Approximately 30% of the actively managed sites are in the remedial phase. The remedial phase consists of the three most actively managed activities: remedial action construction, Operation and Maintenance of a remedial "system" (O&M), and Post Active Remedial Monitoring (PARM), where approximately 47% of the program's budget was spent. The sites under this phase require extensive administrative time since systems in operation have to be monitored, invoices have to be processed and paid, groundwater remediation progress has to be monitored, defective mechanical and digital parts replaced, etc. On the other hand, the cost for Monitored Natural Attenuation (MNA), which is the next phase, is less than 4% of the yearly appropriation and achieved a slightly higher number of site closures than sites in PARM.

### **Program-Specific Performance Objectives for 2013-2014**

The proposed program-specific goals for the FY2013-14 budget allocation of \$125M are built on the three principles of success and are supported by the data shown for FY 2012-13. Fundamentally, the Program expects to focus its main effort and maximize its return on investment by establishing a funding strategy compatible with managing exposure to contamination that does not reduce the Department's level of protection. It also focuses on determining risk for sites for which little to nothing is known and achieving site closures at a higher rate. Based on this, the Program expects to focus its efforts on achieving the following objectives in FY 2013-14:

- Evaluate and reduce the risk to human health and the environment from *all* sites that pose the highest potential risk by establishing funding priorities beginning with the sites scored 75 and above.
- Evaluate risk at a minimum of 400 sites by performing site assessments on sites for which little or no assessment has taken place.
- Close a minimum of 400 sites based on site progress towards groundwater cleanup levels.
- Meet an internal goal to have a minimum of 200 (out of 236) LSSI proposals achieve a LSSI No Further Action as site closure.
- Reduce program capital expenditures for sites in O&M by eliminating sampling on unnecessary monitoring wells, sampling every four months instead of every quarter, cycling systems off and on by operating during off-peak hours, operate a system every other month after the first year (or 8,500 hours of continuous operation), evaluating piping runs to determine which ones can be shutoff, and modifying intensive air sparging systems to less intensive biosparging systems.
- Reduce program capital expenditures for sites in PARM and MNA by extending monitoring frequencies from quarterly to semi-annually or longer if site specific conditions and risk context of site warrant, reducing parameters being analyzed, and by focusing on reducing monitoring wells to only the wells that are necessary to determine natural attenuation progress.

### **Return on Expected FY 2012-13 Program Savings**

The Program expects to save approximately \$6M from the O&M, PARM, and MNA phases vs. FY 2012-13. As these savings are realized, there will be a direct benefit towards improving environmental protection by supporting site assessment efforts at contaminated sites for which little to no assessment information exists.

Program Funding Allocations for the implementation of the **FY 2013-14** appropriation is projected as follows:

<b>Actions with Initial Appropriation of \$50M</b>	<b>Estimated Cost</b>	
Total obligated to date in work orders and task assignments	\$15,886, 028	
Total obligated to date in change orders	\$17,400,000	
<b>Existing balance</b>	<b>\$16,713,972</b>	
<b>Projected Funding Obligation and Priorities with Balance of \$16.7M</b>		
Low Score Site Initiative	-6,000,000	
Imminent Threat Sites	-\$500,000	
Site Rehabilitation for 27 high risk sites	-\$5,500,000	
Site Rehabilitation for 12 high risk sites with only a site assessment	-\$2,500,000	
Cost-shared remediation	-\$1,000,000	
Free Product Initiative Sites	-\$500,000	
<b>Estimated Leftover Balance of \$50M</b>	<b>\$713,972</b>	
<b>Projected Funding Allocations for the Remaining \$75M and Specific Actions</b>		
	\$75M	<b>The amounts below are for operational costs not already covered by the initial \$50M appropriation</b>
<b>Program Operational Assumptions</b>		
Site Assessments	-22M	Perform site assessments at a minimum of 400 sites for which little to no assessment information exists.
Remedial Construction Phase for high risk sites	-20M	Estimate 100 new sites moved to remediation construction phase. Assign \$10M to Performance Based Contracts
Operation and Maintenance of Remedial Systems	-2.5M	Estimate another 50 systems need to be funded.
Post Active Remediation Monitoring	-1.2M	Estimate another 100 systems need to be funded.
Monitored Natural Attenuation	-1.5M	Estimate another 200 sites enter into MNA and need to be funded.
Delineate areas of groundwater contamination	-\$0.5M	Determine the spatial extent of groundwater contamination from petroleum compounds to comply with 373.309, 403.061, 403.062 FS.
Low Score Site Initiative	-\$3M	Process another 120 applications
Cost-share of 2014 Pre-approved Advanced Cleanup Program	-\$8M	Open this cost-share program to applicants in November 2013.
Free Product Recovery Initiative Cost	-\$2M	Maintain estimated cost of FY 2012-13 expenditures
Imminent Threat Sites	-\$6M	Fund IT sites plus site in DeLeon Springs State Park
Other cost share agreements	-\$3M	
<b>Balance</b>	<b>\$5.3M</b>	

The remaining \$5.3M +\$0.7M= **\$6M** would be available for change orders, remedial system parts replacements, sites in other programs/phases, well abandonments, and to cover carryover remedial costs for FY 2012-13 projects.

## Anticipated Performance Expectations for FY 2014-2015

Based upon the strategic direction of this plan, the program expects to achieve the following objectives in FY 2014-15:

- Evaluate potential risk at a minimum of 550 sites.
- Close 600 sites

**Strategic Program Funding for requested FY 2014-15 appropriation will be as follows:**

Action	Estimated Cost	Program Operational Assumptions
Site Assessments	\$30M	Evaluate risk at a minimum of 550 sites for which little to no assessment information is available
Remedial Construction Phase for high risk sites	\$20M	Estimate 100 new sites in remedial construction phase. Approximately \$15M in Performance Based Contracts.
Operations and Maintenance of Remedial Systems	\$16M	Approximately 550 sites in O&M.
Post Active Remedial Monitoring	\$7M	Approximately 600 sites in PARM.
Monitored Natural Attenuation	\$8M	Project approximately 1,300 total sites in MNA.
Delineate areas of groundwater contamination in accordance with Chapter 62-524 F.A.C.	\$1M	Continue to determine the spatial extent of groundwater contamination from petroleum compounds to comply with 373.309, 403.061, 403.062 FS.
Low Scored Site Initiative	\$10M	Assume 400 LSSI applications at an average cost of site assessment of \$25,000.
DEP cost-share of Pre Approved Cleanups (PAC) program	\$15M	Open this cost share program in November 2014
Free Product Recovery Initiative Cost	\$5M	Increase cost vs. FY 2012-13
Imminent Threat Sites	\$1M	
Cost Share Agreements	\$5M	Increase cost vs. FY 2012-13
$\Sigma$	<b>\$118M</b>	

The remaining \$7 million would be available for change orders, remedial system parts replacements, sites in other programs/phases, well abandonments, and to cover carryover remedial costs for FY 2013-14 projects.

## Anticipated Performance Expectations for FY 2015-2016

Based upon the strategic direction of this plan, the program expects to achieve the following objectives in FY 2015-16:

- Evaluate potential risk at a minimum of 650 sites.
- Close 700 sites

**Strategic Program Funding for requested FY 2015-16 appropriation will be as follows:**

Action	Estimated Cost	Program Operational Assumptions
Site Assessments	\$35M	Evaluate risk at a minimum of 650 sites for which little to no assessment information is available
Remedial Construction Phase for high risk sites	\$20M	Estimate 100 new sites in remedial construction phase. Approximately \$15M in Performance Based Contracts.
Operations and Maintenance of Remedial Systems	\$18M	O&M of remedial systems at approximately 600 sites. Maintain population of sites at 600.
Post Active Remedial Monitoring	\$7M	Maintain 600 sites in PARM
Monitored Natural Attenuation	\$9M	Project approximately 1,500 sites in MNA.
Delineate areas of groundwater contamination in accordance with Chapter 62-524 F.A.C.	\$1M	Continue to determine the spatial extent of groundwater contamination from petroleum compounds to comply with 373.309, 403.061, 403.062 FS.
Low Scored Site Initiative	\$10M	Assume 400 LSSI applications at an average cost of site assessment of \$25,000.
DEP cost-share of Pre Approved Cleanups (PAC) program	\$10M	Open this cost share program in November 2015
Free Product Recovery Initiative Cost	\$5M	
Imminent Threat Sites	\$1M	
Cost Share Agreements	\$5M	
$\Sigma$	<b>\$121M</b>	

The remaining \$4 million would be available for change orders, remedial system parts replacements, sites in other programs/phases, well abandonments, and to cover carryover remedial costs for FY 2014-15 projects.

## Anticipated Performance Expectations for FY 2016-2017

Based upon the strategic direction of this plan, the program expects to achieve the following objectives in FY 2016-17:

- Evaluate potential risk at a minimum of 750 sites.
- Close 800 sites

### Strategic Program Funding for requested FY 2016-17 appropriation will be as follows:

Action	Estimated Cost	Program Operational Assumptions
Site Assessments	\$38M	Evaluate risk at a minimum of 750 sites for which little to no assessment information is available
Remedial Construction Phase for high risk sites	\$20M	Estimate 100 new sites in remedial construction phase. Approximately \$15M in Performance Based Contracts.
Operations and Maintenance of Remedial Systems	\$19M	O&M of remedial systems at approximately 600 sites
Post Active Remedial Monitoring	\$7M	Maintain 600 sites in PARM.
Monitored Natural Attenuation	\$10M	Project approximately 1,600 total sites in MNA.
Delineate areas of groundwater contamination in accordance with Chapter 62-524 F.A.C.	\$1M	Continue to determine the spatial extent of groundwater contamination from petroleum compounds to comply with 373.309, 403.061, 403.062 FS.
Low Scored Site Initiative	\$10M	Assume 400 LSSI applications at an average cost of site assessment of \$25,000.
DEP cost-share of Pre Approved Cleanups (PAC) program	\$5M	Open this cost share program in November 2016
Free Product Recovery Initiative Cost	\$2M	
Imminent Threat Sites	\$1M	
Cost Share Agreements	\$5M	
$\Sigma$	<b>\$120M</b>	

The remaining \$5 million would be available for change orders, remedial system parts replacements, sites in other programs/phases, well abandonments, and to cover carryover remedial costs for FY 2015-16 projects.

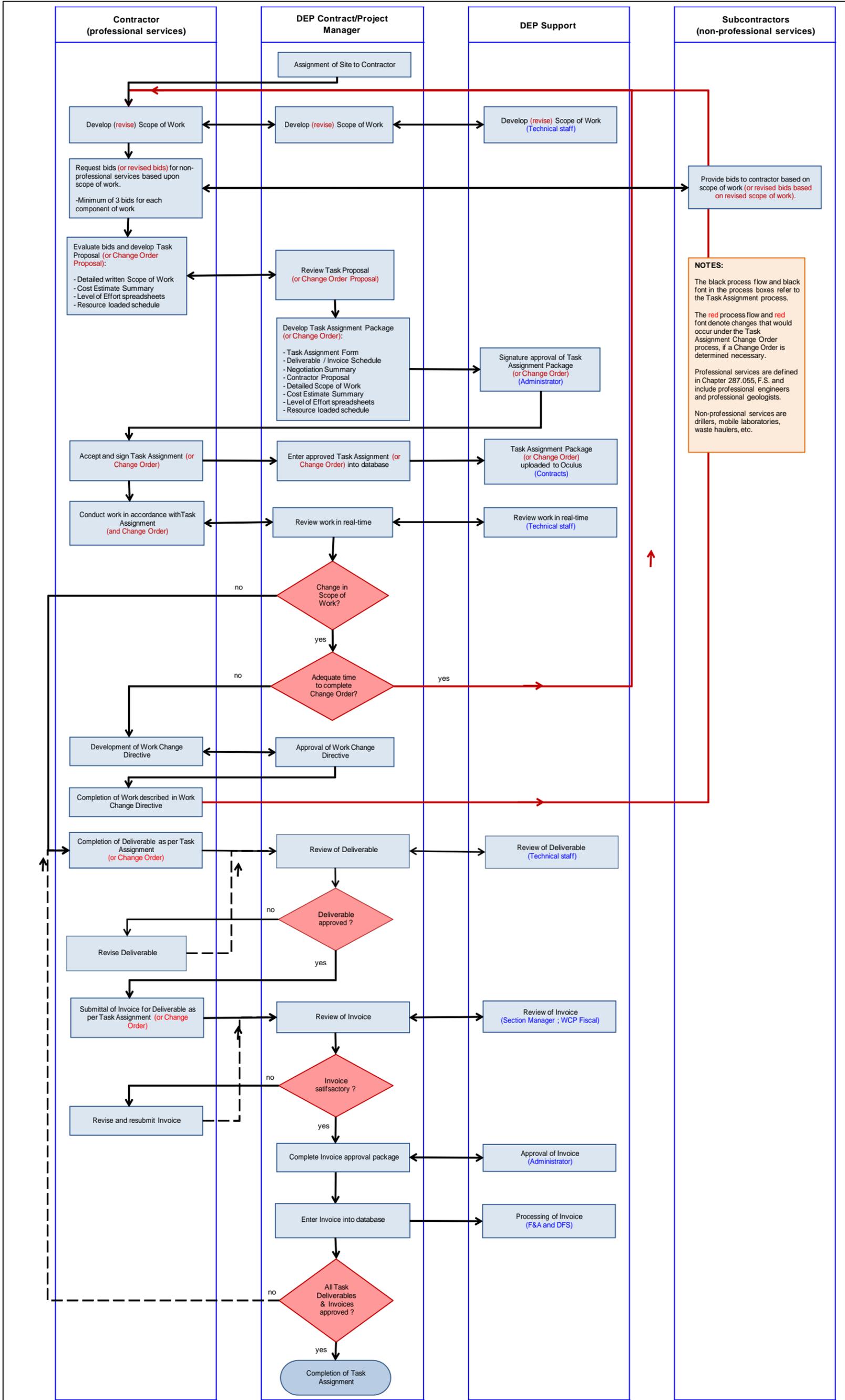
## APPENDIX B

### PROCUREMENT TIMETABLE

Description	Day	Comments
FAW Notice/VBS Advertisement appears on 9/9/2013	1	
Questions Deadline	10	
Answers (prepared and posted to VBS)	15	
Response Due	35	
Procurement Review for Mandatory Requirements	45	Time period reflected here is based on the number of responses received. Plan to review each region separately with ability to issue to reviewers as quickly as possible.
Release to Evaluators	48	Date subject to the number received for review. Partial release on a region basis is planned.
Receipt of Evaluation Score Sheets	62	Date subject to the number of responses received for review.
Procurement Consolidation of Evaluations	66	Date subject to the number of responses received for review.
Decision Memo to Secretary via Deputy Secretary	70	Subject to change based on the review time needed for responses received.
Procurement Posting of Decision on VBS	74	Subject to change based on the review time needed for responses received.
Protest Period (72 hrs.)	77	Subject to change based on the review time needed for responses received.
Negotiations w/recommended awardees	78-88	Subject to change based on the number of firms recommended.
Revised Cost Plans Submitted	80-90	Subject to change based on the number of firms recommended.
Finalized contract for execution	92-100	Would like to have all signed on the same day. Subject to change based on review times.

***Note: The above numbers of days are projections and will be impacted by the number of responses received for each region identified. A procurement announcement will be announced on or about August 30, 2013.***

APPENDIX C



## APPENDIX D

### Equipment Divestiture Plan

#### Current Status:

- 561 systems on project sites.
- All systems have been mapped to determine current location.
- System details (pumps, tanks, volatilization trays, types) summarized per system.
- Capitalized replacement parts expenditures over last three-year period = \$800K
- Determined that a phased divestiture approach is the most reasonable course of action.
- Determined that 66 systems are in storage.
- Determined that 230 systems are shut down in-situ due to the site being in Post Active Remedial Monitoring.
- Determined that 265 systems are currently actively remediating groundwater.
- Project that 161 systems (out of 230) will not be turned back on since active groundwater remediation is no longer expected.
- No longer purchasing systems. New remedial systems will be leased.

#### Current action items to facilitate divestiture on a phased approach

- Developing standardized process to facilitate due diligence by prospective interested parties
  - Assemble auction book (specifications and photographs)
  - Develop website
  - Conduct regional “open houses”

#### Exit Strategy:

- Phase 1: sell a total of  $160 + 66 = 226$  systems grouped (either one big “lot” or three lots based on geographical location). ***Estimated timeframe to accomplish Phase 1: December 31, 2013.***
- Phase 2: do not replace equipment that breaks down and surplus residual system. Lease systems for projected run-out life of system.